

June, 1999

Hon. Norma Holloway Johnson  
Chief Judge  
United States District Court  
for the District of Columbia  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

Hon. Gladys Kessler  
Judge  
United States District Court  
for the District of Columbia  
333 Constitution Avenue, N.W.  
Washington, D.C. 20001

*Re: Advisory Committee on Pro Se Litigation*

Dear Chief Judge Johnson and Judge Kessler:

I am pleased to transmit the Eighth Annual Report of the Advisory Committee on Pro Se Litigation on the Operation of the Civil Pro Bono Panel, 1998-1999.

As you know, the Panel was established in 1991 by Local Rule 702.1. That rule also created a committee of lawyers who practice before the Court, designated as the Advisory Committee on Pro Se Litigation, to oversee the Panel and to report annually on the Panel's operation.

The Committee's activities over the past year and plans for the coming year are set forth in the enclosed report, which includes the customary report from the Indigent Civil Litigation Fund for the transition for the Committee, as Judge Kessler took Judge Robertson's place as the Court's representative. I succeeded Elizabeth Sarah Gere as Committee Chair. I would like to thank Judges Robertson and Ms. Gere for helping make the transition as smooth as it has been.

I would also like to thank those members of the Committee who have taken the time and adjusted their schedules to attend our meetings and plan and conduct our activities. Special mention should be made of Jonathan M. Smith, former Executive Director of the D.C. Prisoners' Legal Services Project, who joined the Committee last year upon accepting a similar position with the Public Justice Center in Washington. Mr. Smith was a tireless contributor to the Committee's efforts.

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Finally, I would like to thank the Court's Pro Se Staff Attorneys, Carol G. Freeman, A Hailstorks and Michael J. Zoeller, as well as former Staff Attorney V. Wendy Bhambri (now Department of Justice), for their commitment and help. They are an important asset for the essential to the Committee's work.

On behalf of the entire Committee, it is a privilege to assist the Court in its effort to justice fairly for all litigants.

Respectfully submitted,

Eugene R. Fidell  
Chair

Enclosure

cc(w/encl):

The District Judges, Senior District Judges and Magistrate Judges  
Nancy Mayer-Whittington, Clerk of the Court  
Joseph Alexander, Administrative Assistant to the Chief Judge  
Jill C. Sayenga, Circuit Executive  
Nancy E. Stanley, Director, Alternative Dispute Resolution Programs  
Members of the Advisory Committee on Pro Se Litigation  
Mortimer Caplin, Esq., President, Indigent Civil Litigation Fund, Inc.  
Joan H. Strand, Esq., President, The District of Columbia Bar  
Myles V. Lynk, Esq.  
Stephen J. Pollak, Esq.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ADVISORY COMMITTEE ON PRO SE LITIGATION  
EIGHTH ANNUAL REPORT ON THE OPERATION  
OF THE CIVIL PRO BONO PANEL

1998-1999

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Michael J. Zoeller, *Ex Officio*

*Liaison Judge*

Hon. Gladys Kessler

June 1999

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Jona Goldschmidt, *How are Courts Handling Pro Se Litigants?*,  
82 *Judicature* 13 (1998)

U.S. District Court Seeks Volunteers to Assist Pro Se Clients, *Bar Report*,  
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John Gibeaut, *Turning Pro Se*, A.B.A.J., Jan. 1999, at 28

## ***Introduction***

This is the Advisory Committee's eighth report to the Court. Over the course of the year now ending, the Committee met four times.<sup>1</sup> We monitored the flow of pro se filings and the operation of the Civil Pro Bono Panel as the primary source of appointed counsel;<sup>2</sup> co-sponsored the annual reception to honor participating members of the Court's bar (held on December 1, 1998); and charted a course for future activities, including training, recruitment of additional Panel members, and availability of mentors for appointed counsel in the main pertinent subject areas. The Committee's outreach efforts included meeting with The District of Columbia Bar's Pro Bono Partnership ("PART") to describe the operation of the Civil Pro Bono Panel and the Indigent Civil Litigation Fund,<sup>3</sup> and supplying information for an article in the *Bar Report* concerning the

In addition to information supplied by the Court's Pro Se Staff Attorneys, the Committee has benefited from information passed along by Judges of the Court and members of the bar concerning developments potentially within our purview. For example, our attention was drawn to the Court of Appeals' decision in *Ficken v. Alvarez*, 146 F.3d 978 (D.C. Cir. 1998), as well as a FOIA case (*Williams v. FBI*, 17 F. Supp.2d 6, 9 (D.D.C. 1997), *appeal voluntarily dismissed*, No. 98-5249 (D.C. Cir. Oct. 6, 1998), in which the District Court considered "the larger public purpose of encouraging service on the Civil Pro Bono Counsel Panel" in awarding attorneys fees. We hope that this flow of information continues.

The Committee has a hard core of regular attenders and active participants. In making future appointments to the Committee, the Court may wish to stress the importance of attendance at meetings, and

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<sup>1</sup> Meetings were held on September 25 and October 27, 1998, and February 17 and May 1999. The minutes of these meetings are reproduced in the Appendix.

<sup>2</sup> Judges of the Court occasionally appoint members of the bar known to them, to represent litigants. These appointments are not addressed in this report. The practice of making appointments is relatively uncommon and appears to be diminishing as the Pro Bono Panel proceeds.

<sup>3</sup> The Committee was represented by Judge Kessler, Addie D. Hailstorks, and Eugene R. I.

meeting attendance should, in all fairness, be taken into account in making decisions concerning reappointment. The Committee's next meeting is scheduled for September 15, 1999.

The Committee and, more importantly, Panel members who accept appointments, perform a vital role in the Court's efficient and effective administration of justice in cases filed by pro se litigants. Civil actions filed by pro se litigants regularly comprise about one-third of all civil actions docketed by the Clerk. With the passage of the Prison Litigation Reform Act in 1996, many expected prisoner pro se filings to decrease dramatically. The Administrative Office of the United States Courts reports that prisoner filings regarding civil rights and prison conditions has dropped only 8% nationally since enactment. In the District of Columbia, total prisoner filings are well within the range of prisoner filings received over the past five years, although the number of paid prisoner filings have increased significantly. In addition, non-prisoner IFP filings have risen sharply. The following table summarizes the number of *pro se* civil actions filed by prisoners and non-prisoners in the Court between April 1, 1998 and March 31, 1999, showing the number filed by prisoners and non-prisoners depending on whether they paid the filing fee or were granted leave to proceed *in forma pauperis*.

	<b>4/1/98 to 3/31/99</b>	<b>4/1/97 to 3/31/98</b>	<b>4/1/96 to 3/31/97</b>	<b>4/1/95 to 3/31/96</b>	<b>4/1/94 to 3/31/95</b>
Total Pro Se Civil Cases Filed	1,138	1,078	1164	925	1162
Pro Se Paid					
Prisoner	160	110	83	27	31
Non-prisoner	189	217	166	184	228
Total:	349	327	249	211	259
Pro Se IFP					
Prisoner	481	499	730	512	647
Non-prisoner	308	252	185	202	256
Total:	789	751	915	714	903

As these data suggest, pro se filings remain (and are likely to remain) a substantial part of the Court's business. That is the bad news. The good news is that the Court's needs are being met as a result of initiatives such as the augmentation of the Court's pro se staff attorneys program, the assignment of a law clerk to the pro se program, and the continuing willingness of members of the Court's bar to accept appointments under Local Rule 702.1. The Committee's largest challenge for the future is to ensure, first, that the Court's needs continue to be met, and second, to spread the burden of meeting those needs more evenly across the bar. At present, a disproportionate share is carried by a relatively small cohort of firms and practitioners. The public-spiritedness of the District of Columbia bar, and the willingness of many of its members to give of their time and skills to advance the public interest, being second to none, we are confident that these goals can be

***Civil Pro Bono Panel Membership and Appointments  
(April 1998 to March 1999)***

The Court may appoint counsel from its Civil Pro Bono Panel when a *pro se* litigant has been granted leave to proceed *in forma pauperis*. Local Rule 702.1 governs the establishment of the Panel and the appointment process. As of March 1999, there were 60 firms and 86 individual attorneys who were members of the Panel. A copy of the list of current Panel members is reproduced in the Appendix to th

Few Panel members agree to accept all types of case. Table 1 below lists the number of Panel members who are willing to accept specified cases in which assignments are most often made. Primarily due to a shortage of Panel members willing to assist in prisoner's rights litigation, the Advisory Committee made efforts to increase membership over the past year (discussed elsewhere in this report). As a result, Panel membership has significantly increased from last year and steps have been taken to continue this recruitme



Table 1: Panel Membership by Case Type

<b>Case Type</b>	<b>Panel Mem- bers</b>
Prisoner's Rights	36
42 U.S.C. § 1983	53
Employment Disputes	82
FOIA	47
Social Security	48
No Preference	15

During the period April 1998 to March 1999, the Court made 56 appointments from the Civil Pro Bono Panel. By contrast, 61 appointments were made during the comparable 1997-98 period, 51 appointments were made during the comparable 1996-97 period, and 77 appointments were made during the 1995-96 period. Although total appointments are less than last year, the number of appearances actually entered increased. Of the 56 appointments made this year, 38 counsel entered their appearance and 28 entered withdrawals. The following table details the types of cases in which appointments were made during the period covered by this Report.

Table 2: Panel Appointments by Case Type

<b>Case Type</b>	<b>Appoint-ments</b>	<b>Appearanc-es</b>	<b>Withdraw-als</b>
Prisoner	31	23	8
Civil Rights	28	21	7
FOIA/Privacy Act	3	2	1
Non-Prisoner	25	16	9
Employment	21	14	7
Civil Rights	1	1	0
Social Security	1	1	0
Other	2	0	2
<b>TOTAL</b>	<b>56</b>	<b>39</b>	<b>17</b>

***Appointments of Pro Bono Panel Members for the Limited Purpose of Representing Indigent Pro Se Litigants in the Court's Alternative Dispute Resolution Program***

At its meeting on October 27, 1998, the Advisory Committee considered the Court's pilot program for appointing Panel attorneys for the limited purpose of the Court's ADR program. Based on the information obtained to date, the pilot program appears to be functioning successfully, and the Committee intends to address the matter further once there has been a sustained period of operation under the pilot pro

***Status of Proposed Revisions to Local Rule 702.1***

Local Rule 702.1 was adopted on January 16, 1991. In 1995, the Advisory Committee submitted proposed revisions. On March 10, 1998, it submitted a further proposed revision in light of the Prison Litigation Reform Act. That proposal appears at Tab E to the Advisory Committee's Seventh Annual Report, submitted on July 27, 1998.

### ***Annual Reception for Civil Pro Bono Panel Members***

On December 1, 1998, the Court hosted a cocktail buffet reception in the Judges' Dining Room for members of the Civil Pro Bono Panel. The date was selected to coincide with an Executive Session of the Court so that as many judges as possible would be able to attend. Approximately 70 attorneys attended. Chief Judge Johnson presented Certificates of Appreciation to Panel members in attendance who had accepted an appointment within the preceding year. As Liaison Judge to the Advisory Committee, Judge Kessler also thanked Panel members in attendance for their service to otherwise unrepresented litigants. Panel members who were unable to be present received their certificates by mail. The process of sending invitations, collecting RSVPs and preparing certificates enabled the Pro Se Unit to update the Panel database.

The reception was catered by Untouchable Taste Catering, an arm of the See Forever Foundation. See Forever is a nonprofit corporation dedicated to working with teens who have come into contact with the juvenile justice system and to helping them to complete their high school education, develop job skills and become productive members of society. The cost of the catering, including all equipment, linens and disposable goods, was \$2,640. Attractive table centerpieces by Creative Floral Designs cost \$100. The total of \$2,740 was paid from the Court's budget. Wine and soft drinks were generously donated by the law firm of Fried, Frank, Harris, Shriver & Jacobson.

The reception received favorable reviews from the Court, the Advisory Committee and guests. It is the Committee's consensus that the Panel reception should be an annual event because it not only provides an opportunity to recognize Panel members, but also aids in recruitment and builds goodwill between volunteer attorneys and the Court.

## ***Advisory Committee Goals for 1999-2000***

### **A. Recruitment**

The Recruitment Subcommittee implemented a plan to advance the recruitment of additional firms and attorneys for the Civil Pro Bono Panel. Critical elements of the plan included: expanding the size and diversity of the panel; integrating recruitment and training opportunities; identifying and developing informal resources for panel members.

The subcommittee reviewed and revised the promotional materials utilized by the Pro Se Staff Attorneys for publication and promotion of the Panel. These materials were disseminated to bar associations, law firms and individual attorneys.

Judge Kessler (with the support of committee members) made presentations at The District of Columbia Bar to encourage greater participation in the Panel. In the fall, she met with the leaders of the mandatory bar and the voluntary bar associations to explain the workings of the Panel, to outline benefits of participation on the Panel, and to answer questions concerning opportunities for lawyers in varying practices to participate on the panel. In late winter, again assisted by Committee members, she gave a similar presentation to a gathering of law firm pro bono personnel (partners, counsel, administrators).

The subcommittee coordinated its recruitment efforts with the activities of the training subcommittee, the annual judicial reception committee, and the sub-committee developing a mentor/resource list for panel members. Each of these collaborative efforts nurtured a greater awareness of the need, stimulated increased interest in the operations of the Panel and motivated new members to join the Panel.

### **B. Training**

A subcommittee will seek to identify additional training to assist the attorneys on the Civil Pro Bono Panel. The Advisory Committee anticipates another "brown bag" luncheon of approximately 1 to 1 1/2 hours at

which discussion will focus on new issues of interest to Panel members, including implementation of the Court's ADR program and the participation of Panel members in the process.

The Advisory Committee again hopes that space can be made available at a convenient location in the Courthouse, such as the Judges' Dining Room, for approximately 25 interested attorneys. We will also continue to consider the need for additional training on other topics as needs may arise, and will schedule other sessions, as appropriate.

### C. Mentoring

During this year, the Advisory Committee initiated an effort to identify experienced attorneys who are willing to serve as informal resources for Panel members who have received appointments outside their usual practice area. The Committee believes that these experienced attorneys will be invaluable resources for Panel members by helping brainstorm on potential causes of actions or defenses and giving practice pointers at key stages in the litigation. Such informal guidance is particularly useful in the more common pro se case areas, particularly those involving prisoners rights, 42 U.S.C. § 1983 cases generally, employment discrimination, FOIA and Social Security appeals. Several Committee members have volunteered so far and we are gathering additional names to cover a few more major substantive areas. Attorneys who are interested in volunteering or are in need of an informal resource for a Panel case are being encouraged to contact Anthony T. Pierce, of Akin, Gump, Strauss, Hauer & Feld, L.L.P., at (202) 887-4411.

### D. Information Packets for Pro Se Litigants

Courts across the country are trying to make civil litigation more accessible to the growing number of litigants who are unrepresented by counsel. In this Court, pro se litigation accounts for roughly one-third of the civil caseload. Of these litigants, only about 4% had counsel appointed to represent them. For all the rest, chambers staff and Clerk's Office personnel are left to field questions from pro se litigants and walk the fine

line between providing assistance on procedural matters and giving legal advice. Next year, the Advisory Committee will begin work on a project designed to create information packets for civil pro se litigants that can be distributed by court staff. These packets will cover such topics as discovery and how to file a motion. One such packet will cover ways of finding an attorney and provide a list of resources that may

### ***Report of the Indigent Civil Litigation Fund***

The Indigent Civil Litigation Fund, Inc. ("ICLF") was created in 1991 with the encouragement of the Judges of the District Court, to provide a source of reimbursement for litigation expenses incurred by attorneys appointed under Local Rule 702.1. The ICLF was seen as a way of attracting volunteer attorneys to the Civil Pro Bono Panel, particularly attorneys from small firms or solo practitioners who might have been deterred by the prospect of significant unreimbursed litigation expenses. Attorneys appointed under Local Rule 702.1 are advised of the ICLF's existence and purposes in the materials that they receive with the ord

The ICLF is a nonprofit corporation that the Internal Revenue Service has determined to be exempt from federal taxation pursuant to § 501(c)(3) of the Internal Revenue Code.

Since it began operations, the ICLF has obtained contributions of \$35,628, including an initial \$10,000 grant from the Court. Because of the relative paucity of applications, the ICLF has not sought increased contributions since 1993. Amounts paid in reimbursement from the inception of the ICLF to the present total \$17,538, but during 1998 no requests for reimbursement were received or paid. One application for reimbursement is currently pending. The ICLF had on hand a balance of \$21,423 as of Jur

### ***Conclusion***

The proper and creative handling of pro se litigation is a challenge that many court systems are currently confronting. Later this year, a nationwide conference is being conducted on the subject under the auspices of the State Justice Institute. Individual jurisdictions are evaluating their systems for the handling of pro se

litigation, including such efforts as the Boston Bar Association Task Force on Unrepresented Litigants' 1998 *Report on Pro Se Litigation*, which examined conditions throughout Massachusetts. The subject has received attention from the Justice Management Institute as well as the American Judicature Society, whose guidebook on *Meeting the Challenge of Pro Se Litigation* received the State Justice Institute's Howell Heflin Award in 1998.

The Committee believes that these developments should be carefully monitored to make certain that the Court's answer to the administrative and other challenges of pro se litigation reflects the best available thinking. As a result, our efforts for the future should not only be introspective, in terms of accommodating the Court's needs in a way that is effective, administratively sound, and fair to the bar, but also outward-looking so that the Court can be aware of and benefit from the experience of other jurisdictions as well as the Superior Court of the District of Columbia.